

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

651P0467

SENATE CONCURRENT RESOLUTION NO. 8

Introduced by: Senators McNenny, Albers, Gant, Hanson (Gary), Hauge, Katus, Lintz, McCracken, Napoli, Peterson (Jim), Schmidt (Dennis), and Sutton and Representatives Rhoden, Bradford, Brunner, Deadrick, DeVries, Dykstra, Halverson, Hargens, Howie, Jerke, Lucas, Noem, Novstrup (Al), Olson (Betty), Olson (Russell), Olson (Ryan), Rave, Street, Tidemann, Turbiville, Vanneman, and Willadsen

1 A CONCURRENT RESOLUTION, Opposing efforts in Congress to expand the jurisdiction of
2 the federal Clean Water Act by revising the terms "navigable waters" and "waters of the
3 United States".

4 WHEREAS, the Congress of the United States has taken up H.R. 2421 and S. 1870 which
5 appear to broaden the scope of the jurisdiction of the federal Clean Water Act; and

6 WHEREAS, one change being sought through this legislation would remove from the Clean
7 Water Act the term "navigable waters" and replace it with the term "waters of the United
8 States"; and

9 WHEREAS, the term "waters of the United States" means that all waters subject to the ebb
10 and flow of the tide, the territorial seas, and all interstate and intrastate waters and their
11 tributaries, including lakes, rivers, streams, intermittent streams, mudflats, sand flats, wetlands,
12 sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of
13 these waters, or activities affecting these waters, would be subject to the legislative power of



1 Congress under the Clean Water Act; and

2 WHEREAS, H.R. 2421 creates unfunded mandates for states by increasing the number of
3 waters subject to water quality standards, effluent limitation guidelines, the setting of total
4 maximum daily loads, and expanding the permitting workload under various aspects of
5 state-administered programs; and

6 WHEREAS, the proposed change in language may negatively impact local units of
7 government in that the U. S. Army Corps of Engineers may be forced to review projects and
8 applications for permits in greater numbers, which may also cause delay of permitting to local
9 agencies. The Corps of Engineers currently faces a national backlog of nearly 30,000 permits
10 under the present definition of waters, with an average time lapse of up to several years from
11 submission to approval or denial of any individual permit; and

12 WHEREAS, the proposed change to the Clean Water Act will negatively affect both states
13 and localities. The proposed changes could require that counties obtain Section 404 or 402
14 permits for all projects that would impact the "waters of the United States". Some areas that
15 could be affected by the proposed change include man-made ditches, culverts and pipes; roads,
16 curbs, and sidewalks; water and water transfer rights; routine maintenance and clean-up of
17 debris in flood control channels; waste treatment systems and settling ponds; pesticide
18 application, including mosquito abatement; and fire retardant sprays; and

19 WHEREAS, under H.R. 2421, even land that is mostly dry could potentially be considered
20 a federally protected water of the United States and people placing clean fill on mostly dry land
21 could be charged with a federal offense; and

22 WHEREAS, H.R. 2421 would vastly expand the Clean Water Act and increase the extent
23 of federal government control over our lives and property. H.R. 2421 would usurp local and
24 state authority in land use decision making and further erode the concept of federalism as a

1 fundamental aspect of American government:

2 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Eighty-Third Legislature
3 of the State of South Dakota, the House of Representatives concurring therein, that the South
4 Dakota Legislature opposes efforts in Congress to expand the application of the Clean Water
5 Act by changing the definition in the Clean Water Act from "navigable waters" to "waters of the
6 United States" and urges the defeat of H.R. 2421 and similar proposed federal legislation.